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OFFICE OF PETITIONS

In re Application of: :
Remacle et al. :
Application No. 09/817,014 : DECISION ON
Filed: March 23, 2001 : PETITION
For: IDENTIFICATION OF BIOLOGICAL :
(MICRO) ORGANISMS BY DETECTION OF :
THEIR HOMOLOGOUS NUCLEOTIDE :
SEQUENCES ON ARRAYS :

This is a decision in response to the Petition Under 37 CFR 1.181(a), to Withdraw Holding of Abandonment Based on Evidence that a Reply was Timely Mailed or Filed, filed October 14, 2005.

The petition is **granted.**

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action mailed March 18, 2005. The Office action set a three (3) month period for reply, and also provided for extensions of time under 37 CFR 1.136(a).

Applicant filed a reply on Monday, September 19, 2005. The reply comprised a Request for Continued Examination ("RCE"), a submission in the form of an Amendment and an Information Disclosure Statement ("IDS"), and a return postcard.

In support of Applicant's assertion, that a timely reply to the non-final Office action was filed, Applicant files a copy of the filing, and a copy of a return-receipt postcard evidencing receipt of, *inter alia*, an RCE; Amendment; three (3) month extension-of-time request, and IDS.

A review of the Application file reveals that the Office timely received an RCE; Amendment; three (3) month

extension-of-time request, and IDS on September 21, 2005 (Certificate of Mailing dated (Monday), September 19, 2005):

The MPEP provides that the required reply to a non-final Office action may be an Amendment under 37 CFR 1.111. Accord MPEP 711.03(c). While this Office notes that an RCE is an improper reply to a non-final Office action, the Amendment represented a bona-fide attempt to advance the application to final action. See, 37 CFR 1.135(c).

In this instance, Applicant timely filed an Amendment in response to the non-final Office action. As such, the holding of abandonment is improper and is hereby withdrawn.

The RCE filing fee has been refunded to Applicant's deposit account as authorized in the instant petition.

The application file is being referred to Technology Center 1637 for consideration of the Amendment filed September 19, 2005, and for continued examination in due course.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.



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Office of Petitions